# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CS No. 6 of 2004**

**Reserved on: October 20, 2006**

**Decided on : 3.11.2006**

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**Gurmesh Kaur and another** **…..Plaintiffs.**

***VERSUS***

**Smt. Chander Kala and another** **... ..Defendants.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

***Whether approved for reporting?[1]***

**For the Plaintiffs : Mr. Sudhir Sharma, Advocate.**

**For the Defendants : Mr. Lalit Sharma, Advocate.**

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**Surjit Singh, Judge**

Plaintiffs have filed a suit for recovery of a sum of Rs.11,05,000/- against the defendants, pleading the following cause of action. Plaintiff No.1 is the mother and plaintiff No.2 is a sister of defendant No.2. It is alleged that the husband of plaintiff No.1 was posted at Kullu in Posts and Telegraph Department in the year 1960. Plaintiff No.1 accompanied him to Kullu and they started living there. Defendant No.2, who is the son of plaintiff No.1, married defendant No.1, who is a native of Kullu District, in the year 1988. When the husband of plaintiff No.1 died, she started living with the defendants. In the year 1988, plaintiff No.2, the sister of defendant No.2, got employed as Air Hostess. Plaintiff No.1 and the defendants used to live in a rented accommodation at Kullu. Also Defendants No.1 and 2 did not have any permanent source of income. Defendant No.2 used

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***Whether the reporters of the local papers may be allowed to see the Judgment?***

to deal in sale and purchase of second-hand cars, while defendant No.1 was only a housewife. They approached plaintiff No.2, the sister of defendant No.2, to lend money for the purchase of a piece of land for the construction of a house and also to construct house on that piece of land. Plaintiff No.2, out of pity and also on account of the fact that her mother, i.e. plaintiff No.1, lived with the defendants, agreed to lend money to the defendants with the condition that the same will be returned to her on demand. In June, 1997, plaintiff No.2 paid an amount of Rs.3,80,000/- in cash for the purchase of 5 biswas land, comprised in Khasra Nos. 963.838 and 965/838, situate in Mauza Mohal. The land was purchased in the name of defendant No.1, because she is a bonafide agriculturist of Himachal Pradesh. Thereafter, from June, 1997 to September, 2003, plaintiff No.2 paid a sum of Rs.7,77,000/- to defendant No.2 in parts through cheques and drafts. Some of the cheques/drafts were in the name of defendant No.2 and some others in the name of plaintiff No.1, who handed over the contents of those cheques and drafts to the defendants for construction of the house. In December, 2003, plaintiff No.2 demanded the money from the defendants, as she wanted to buy a house at Bombay where she lives with her husband. The defendants refused to pay the money. So, the plaintiffs filed the suit for recovery of the loan amount, the total of which, according to them, comes to Rs.11,57,000/-.

***2.*** Defendants contested the suit. They alleged that substantial claim of the plaintiffs was barred by limitation. It was alleged that the suit was not maintainable in the form in which it was

laid. Further, it was stated that the plaintiffs had no cause of action. Plea of estoppel was also raised. On merits, it was denied that the money was lent by plaintiff No.2 to the defendants, as alleged. It was alleged that the mother of defendant No.1 was a rich woman, who owned landed property as also an orchard, and that it was she who had lent the money for the purchase of the site. It was stated that the site of the house was purchased only for a sum of Rs.77,000/- and this fact itself belied the plaintiffs' claim that an amount of Rs.3,87,000/- was advanced for the purchase of the site. Suit was alleged to have been overvalued for the purpose of jurisdiction.

***3.*** Following issues were framed by this Court on the pleadings of the parties on 2.9.2004:

**1.** Whether plaintiff No.2 paid Rs.3,80,000/- in cash in June, 1997 to the defendants with an understanding that money would be returned back to her on demand, as alleged? **OPP**

**2.** Whether the plaintiffs paid to the defendants amount by various cheques and drafts amounting to Rs.7,77,000/-, as detailed in para 7 of the plaint? **OPP**

**3.** Whether the plaintiff is entitled to recover the amount of Rs.11,05,000/-, as alleged? **OPP**

**4.** Whether the suit is barred by the period of limitation? **OPD**

**5.** Whether this Court has no jurisdiction to try the suit? **OPD**

**6.** Whether the plaintiffs are estopped from filing the present suit on account of their own acts and conduct? **OPD**

**7.** Whether the plaintiffs have no cause of action? **OPD**

**8.** Whether the suit is not maintainable in the present form? **OPD**

**9.** Relief.

***4.*** Thereafter, evidence was led by the plaintiffs. On 23.5.2005, when the case was listed for recording the evidence of the defendants, nobody appeared for them and so they were ordered to be proceeded ex-parte, and on the same day ex-parte arguments were heard and judgment reserved. On 26.5.2005, the suit was partly decreed ex-parte and a decree for 6,35,000/- with proportionate cost was passed in favour of plaintiff No.2 and against both the defendants. The defendants then moved an application for setting aside ex-parte decree. That was allowed, vide order dated 20.10.2005. Thereafter, the defendants examined three witnesses and closed their evidence. Plaintiffs made a statement, through their counsel, that they did not want to lead any evidence in rebuttal.

***5.*** I have heard the learned counsel for the parties and gone through the record. My findings on the aforesaid issues and the reasons in support of the findings are as under.

**ISSUE NO.1**

***6.*** The only evidence that has been led by the plaintiffs in support of this issue is the bald testimony of plaintiff No.2, who has examined herself as PW-5. There is no corroborative evidence. Even plaintiff No.1 does not corroborate her on the point, as she has not said even a word about the loaning of any amount of money in cash by plaintiff No.2 to the defendants, leave alone the alleged huge amount of Rs.3,80,000/-. The plaintiffs have proved a statement of account, which plaintiff No.2 had with Punjab and Maharashtra

Cooperative Bank Ltd., Andheri East. The same is Ex. P-1. Plaintiff No.2 has stated in her testimony as PW-5 that in June, 1997 when she came to Kullu from Bombay, she, on having been approached telephonically by defendant No.2 for advancing money for purchase of land, brought Rs.3,80,000/- in cash. The statement of account Ex. P-1 shows that in June, plaintiff No.2 withdrew from her aforesaid account only a sum of Rs.4,000/- on 11.6.1997. Thus, the statement of account does not corroborate her testimony of having paid Rs.3,80,000/- in cash to defendant No.2. Plaintiff No.2 could not have kept such a huge amount of money at her place of residence in Bombay, especially when she was employed as an Air Hostess and was supposed to be away from her residence most of the time and was also even unmarried and thus supposedly living alone. Defendant No.2, while in the witness box as DW-2, has denied that he borrowed any money from his sister for the construction of the house or purchase of the site of the house. No suggestion was put to him in the cross-examination that a sum of Rs.3,80,000/- had been paid to him in cash in June by plaintiff No.2 for the purchase of the site of the house, on his asking or otherwise. Suggestion was put to him only with respect to the remittance of a sum of Rs.3,85,000/- by various cheques and drafts, as shown in bank statement Ex. P-3, which he denied. Another suggestion was put to him that a sum of Rs.3,42,000/- had been remitted by plaintiff No.2 to plaintiff No.1 by cheques and cash and the latter passed on the entire amount to him for the construction of the house. He denied this suggestion also.

***7.*** In view of the abovestated position, particularly the fact that the statement of plaintiff No.2 regarding payment of Rs.3,80,000/- in cash is not corroborated by any evidence nor even by the testimony of plaintiff No.1, as also the fact that statement of defendant No.2 that no money was taken by him from plaintiff No.2 for the purchase of the site and this statement having not been challenged and no suggestion having been put to him in the cross-examination by the plaintiffs that an amount of Rs.3,80,000/- was paid to him in cash in June, 1997, it is held that no money had been paid in cash to the defendants by plaintiff No.2 in June, 1997. Issue is answered accordingly.

**ISSUE NO.2**

***8.*** Plaintiffs have proved two certificates, Ex. P-2 and Ex. P-3, issued by Punjab and Maharashtra Cooperative Bank Ltd., Andheri East, Mumbai. The certificates are based on the entries in the statement of account Ex.P-1, which is in the name of plaintiff No.2 with the aforesaid bank. The statement of account, Ex.P-1, and the certificates, Ex.P-2 and Ex.P-3, have been proved by PW-1 Yogesh Lakhani, an Officer of the aforesaid bank.

***9.*** As per certificate Ex.P-2, plaintiff No.2 remitted an amount of Rs.3,42,000/-, by means of 19 drafts, to plaintiff No.1 from 25.9.1997 to 9.9.2003. Certificate Ex.P-3 shows that plaintiff No.2 remitted an amount of Rs.3,85,000/-, by means of 13 demand drafts, to defendant No.2 from 23.10.1997 to 22.3.2000. The contents of the certificates are supported by the entries in the statement of account of plaintiff No.2, which is Ex.P-1. Statement of account Ex.P-3 belies

the testimony of defendant No.2, who appeared as DW-2, that no amount was received by him from plaintiff No.2. He was specifically confronted with certificate Ex.P-3. Instead of offering any explanation for the remittance of this amount of money to him by various demand drafts, he simply denied that no money was remitted to him by demand drafts, referred to in Ex.P-3. This denial is falsified by certificate Ex.P-3 and the entries in the statement of account Ex.P-1. Consequently, it is held that plaintiff No.2 remitted a sum of Rs.3,85,000/-, as mentioned in Ex.P-3, to defendant No.2.

***10.*** It is also the case of the plaintiffs that in addition to the remittance of Rs.3,85,000/- to defendant No.2, by means of the demand drafts, referred to in Ex.P-3, a sum of Rs.3,40,000/- was paid to him through plaintiff No.1 to whom a sum of Rs.3,42,000/- had been remitted, vide various demand drafts, as mentioned in certificate Ex.P-2. The evidence led by the plaintiffs to prove this assertion consists of PW-4 Gurmesh Kaur and PW-5 Jasveen Kapoor, and the statement of account of plaintiff No.1 Gurmesh Kaur with Punjab National Bank, Kullu, which is Ex.P-6, and certificate Ex.P-5 issued by the said Bank. Gurmesh Kaur, while in the witness box as PW-4, has stated that her daughter, plaintiff No.2, had remitted some amount of money to her, which she deposited in her accounts with the Punjab National Bank and State Bank of India and that out of her account with Punjab National Bank, she paid the price of the land purchased in the name of defendant No.1 from Nageshwari and Puran Chand, for the construction of the house. Certificate Ex.P-5 issued by Punjab National Bank, duly supported by entries in statement of account

Ex.P-6, shows that out of the Savings Bank Account of plaintiff No.1, a sum of Rs.50,000/- was paid by cheque to Smt. Negeshwari on 30.12.1997 and a sum of Rs.1,90,000/- was paid to Puran Chand on 30.12.1997, and an amount of Rs.10,000/- was again paid to Puran Chand on 24.4.1998. This evidence runs counter to the pleaded version and the testimony of plaintiff No.2 Jasveen Kapoor that she had paid Rs.3,80,000/- in cash to defendant No.2 for the purchase of the site in June, 1997. Moreover, the sale deed Ex.DB that was executed by Nageshwari and Puran Chand in favour of defendant No.2 shows that the sale consideration was only Rs.70,000/-. Therefore, the payment by cheques to these two persons, as referred to in certificate Ex.P-5, does not stand connected with the price of the site on which the defendants have constructed the house.

***11.*** The plea that the amount of Rs.3,42,000/-, referred to in certificate Ex.P-2, was paid by plaintiff No.1 to the defendants, is not proved from the testimony of PW-4 Gurmesh Kaur. She has stated that plaintiff No.2 used to financially support her when she had been living with the defendants. That means the money remitted by plaintiff No.2 to plaintiff No.1, as per certificate Ex.P-2, was meant for financial support of plaintiff No.1 and not loaned to defendant No.2 by plaintiff No.2 through plaintiff No.1, as claimed. Consequently, it is held that it does not stand proved that the money remitted by plaintiff No.2 to plaintiff No.1, per certificate Ex.P-2, was passed on by plaintiff No.1 to defendant No.2 for the construction of the house, by way of loan by plaintiff No.2 to defendant No.2.

***12.*** As an upshot of the overall discussion and findings under this issue, it is held that plaintiff No.2 loaned an amount of Rs.3,85,000/- to defendant No.2, by means of various demand drafts as mentioned in certificate Ex.P-3. Accordingly, the issue is answered partly in favour of the plaintiffs and partly against them.

**ISSUE NO.3**

***13.*** In view of the findings on issues No.1 and 2, it is held that plaintiff No.2 is entitled to recover only a sum of Rs.3,85,000/- from defendant No.2. This finding is, however, subject to the finding on issue No.4, which is being recorded against the plaintiffs.

**ISSUE NO.4**

***14.*** Statement Ex.P-3 shows that the money was remitted by plaintiff No.2 to defendant No.2 from 23.10.1997 to 22.3.2000. The suit was filed on 2.4.2004. Limitation for a suit for recovery of loan is three years, under Article 19, irrespective of the fact whether the money is payable on demand or otherwise. Article 19 of the Limitation Act says that the limitation is three years in a suit for recovery of money payable for money lent and limitation begins to run from the date of the loan. Article 21, which governs the limitation in respect of a suit for recovery of money lent under an agreement that it shall be payable on demand, also prescribes three years limitation and it also starts running from the date of the loan itself. Therefore, the plea of the plaintiffs that the money was agreed to be returned on demand and that the demand was made in December, 2003 and so the limitation should be computed from December, 2003 is contrary to the provisions of law. The suit having been filed more than three

years, after the date of the remittance of even the last amount, referred to in Ex.P-3 (the last date of remittance, per this certificate, is 22.3.2000), is clearly barred by time. Issue is answered accordingly.

**ISSUES NO.5**

***15.*** Suit has been filed for the recovery of a sum of Rs.11,05,000/-. Court fee has also been paid on this amount. The upper limit of the pecuniary jurisdiction of the Court of District Judge is Rs.10,00,000/-. Therefore, only this Court has the jurisdiction to entertain and try the suit. Issue is answered accordingly.

**ISSUES NO.6,7 & 8**

***16.*** Neither any evidence has been led by the defendants to discharge the onus of proof of these issues nor did their counsel point out at the time of the hearing of arguments how the plaintiffs are estopped to file the suit, or how the plaintiffs have no cause of action and how the suit is not maintainable in the present form. So, all these issues are answered against the defendants.

**ISSUE NO.9 Relief**

***17.*** In view of the finding on issue No.4, the suit is dismissed with no order as to costs.

**November 3, 2006(sd) ( Surjit Singh ), J.**